



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,573	11/24/2003	Thomas McKevitt	9249-55U1	5712

570 7590 08/05/2004

AKIN GUMP STRAUSS HAUER & FELD L.L.P.  
ONE COMMERCE SQUARE  
2005 MARKET STREET, SUITE 2200  
PHILADELPHIA, PA 19103-7013

EXAMINER

GRAHAM, MARK S

ART UNIT PAPER NUMBER

3711

DATE MAILED: 08/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/720,573

Applicant(s)

MCKEVITT ET AL.

Examiner

Mark S. Graham

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

Art Unit: 3711

Claims 9-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 9, "the second end" lack proper antecedent basis.

In claim 10, "the first end" and "the second end" lack proper antecedent basis.

In claim 11, "the head portion" lacks proper antecedent basis.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 12 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Morse.

Claims 8, 9, 11, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Adorjan '749 (Adorjan). Elements 12 and 7 may be considered the plugs.

Regarding claim 11, element 7/1' may be considered the head portion.

Claim 10 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Moore.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3711

Claims 2-7 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laub in view of Adorjan '489. Laub discloses the claimed device/method with the exception of using a plurality of removable weights. However, as disclosed by Adorjan '489 it is known in the art to use a plurality of removable weights to adjust the cue to the particular user. It would have been obvious to one of ordinary skill in the art to have done the same with Laub's weight 110 for the same reason.

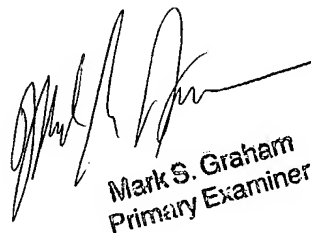
Regarding claim 3, note Adorjan's plug 7. It would have been obvious to have provided Laub's cue stick with such also to seal the end of the stick.

Concerning claims 4-7, absent a showing of unexpected results the exact dimensions and weights of the Laub/Adorjan '489 weights would obviously have been up to the ordinarily skilled artisan depending on the degree of weight and balance one wished to provide for the stick.

Thorpe, Keaggy, Bourque, Bucknum, and Hutzel have been cited for interest because they disclose similar cues.

Any inquiry concerning this communication should be directed to Mark S. Graham at telephone number 703-308-1355.

MSG  
8/2/04



Mark S. Graham  
Primary Examiner